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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/612,632

07/01/2003

Michael Stochosky

2095.004100

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7590

10/21/2008

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EXAMINER

DENNISON, JERRY B

ART UNIT

PAPER NUMBER

2443

MAIL DATE

DELIVERY MODE

10/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|---|--------------------------------------|---|--|
| Advisory Action Before the Filing of an Appeal Brief | Application No. 10/612,632 | Applicant(s) STOCHOSKY, MICHAEL | |
| | Examiner J. Bret Dennison | Art Unit 2143 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Attached.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/J. Bret Dennison/
 Examiner, Art Unit 2443

The objection to the Specification is respectfully maintained. While Applicant provides "examples" of what a product may be, Applicant hasn't explicitly defined the term in the Specification. As such, it is uncertain if the term covers non-statutory subject matter.

The rejections under 112 2nd for the term "substantially" are respectfully maintained, because it is not clear how much latency or delay there may be and still consider the stream to be "substantially synchronized."

The rejections under 101 are respectfully maintained.

Examiner agrees with Applicant that the peer "may be" a physical device. However, Applicant's Specification also states that it "may be" a virtual device, i.e. software. Applicant must amend the claim to distinguish from the software aspect in order to overcome the 101 rejection. With regards to the date of the Microsoft Computer Dictionary, it appears Applicant has completely ignored Examiner's Response in the Final Rejection. Applicant is suggested to read this response.

Regarding Applicant's arguments with respect to claim 42, Applicant is invited to provide evidence as to why Applicant states, "clearly, these modules include embodiments that have physical entities." Examiner respectfully disagrees for the reasons provided in the Final Rejection.

Regarding Applicant's arguments with respect to claims 1-21, it is clear that the system may be a software system according to the evidence provided in Applicant's Specification, as pointed out in the Final Rejection.

The rejections under 102 are respectfully maintained.

Applicant argues that the chat room of Gore is provided for communicating peripheral information regarding the operation of the media, "not the media itself". In response, Applicant's claims only recite "sending information about the active content." As Applicant explains, Gore sends information "about" the media. Applicant is suggested to review the response in the Final Rejection

Regarding Applicant's arguments that Gore does not teach that the first chat module does the sending to the receiving client computer, Examiner respectfully disagrees. In order for such data to be received at the second chat module, it must be sent from the first chat module.

Regarding Applicant's arguments that Lee fails to disclose a first chat module sending information about the active content to a recipient peer, Examiner respectfully disagrees. Applicant's argument that the modules use a second path, does nothing to negate the fact that the modules are clearly communicating.

Regarding Applicant's argument that Lee fails to teach requesting the stream, Examiner respectfully disagrees. Lee clearly disclosed sending a request for the content, see [0078]. Clearly this also includes sending the content, since the entire purpose for the request is to receive the content.

The rejections under 103 are respectfully maintained. As explained in the rejection, Lee disclosed wherein the recipient peer further comprises a content information database (Lee, [0079], virtual memory, cache, that stores tracks). Lee also disclosed the recipient machine using a unique identifier to identify files (Lee, [0078]) and the sending machine "knows" which tracks are currently stored on the receiving machine (Lee, [0079]). It would have been obvious to one of ordinary skill in the art that if the sender identifies content by an identifier and the sender also is in communication with the receiver and "knows" what the receiver already has, it only makes sense that such an identifier would be used across communication, thereby minimizing the amount of traffic because only the identifier would need to be used. Regarding Applicant's other arguments, Applicant is suggested to review the response section in the Final rejection.